
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

KELVIN ANDRE SPOTTS,

Plaintiff,

versus

DALLAS B. JONES, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:18-CV-41

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Kelvin Andre Spotts, an inmate confined at the United States Penitentiary in Beaumont, Texas, proceeding *pro se*, brought this civil rights action against prison officials.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends this action be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g) based on plaintiff having had at least four previous lawsuits or appeals dismissed as frivolous or for failing to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff contends one of the strikes cited by the magistrate judge, *Carraquillo v. Upton*, Civil Action No. 1:09cv817 (E.D. Tex. 2010), should not be used against him because he was part of a class action. In support of his proposition, plaintiff cites *Meisberger v. Donahue*, 245 F.R.D. 627 (S. D. Ind. 2007). However, *Carraquillo* is not analogous to *Meisberger*.

In *Meisberger*, the court was discussing the possible inequity of applying § 1915(g) to unnamed class members, but did not address the issue. *Id.* at 630. In plaintiff's case, on the other hand, he was a named member of the action in *Carraquillo* and he was represented by counsel. The Fifth Circuit has not held that § 1915(g) does not apply to each named class member. Finally, plaintiff's claims in this action are insufficient to demonstrate he was in imminent danger of serious physical injury at the time he filed the complaint. *See Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

O R D E R

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 20th day of August, 2018.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE